

BOARD OF APPEALS CASE NO. 4968

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BEFORE THE

APPLICANTS: Gregory & Roberta  
Svoboda

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ZONING HEARING EXAMINER

REQUEST: Expansion of non-conforming  
use and variance to exceed 50% of the  
gross square footage; 1905 Rock Spring  
Road, Forest Hill

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 8/25/99 & 9/1/99

HEARING DATE: October 27, 1999

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Record: 8/27/99 & 9/3/99

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### ZONING HEARING EXAMINER'S DECISION

The Applicants, Gregory and Roberta Svoboda, appeared before the Hearing Examiner requesting an expansion of a non-conforming use, pursuant to Section 267-21 of the Harford County Code, and a variance to Section 267-21(B) to allow in excess of 50% of the gross square footage in use at the time of the creation of the non-conformity.

The subject parcel is located at 1905 Rock Spring Road in the Third Election District. The parcel is identified as Parcel No. 51, in Grid 1-E, on Tax Map 40. The parcel contains 16.81 acres, more or less, all of which is zoned R2.

Dr. Gregory Svoboda appeared and testified that a veterinary clinic was first established on the subject property in 1952 by Dr. Richard Faber. Dr. Stephen Wilson purchased the property and continued the use in 1984, and Dr. and Mrs. Svoboda purchased the property in 1986. Dr. Svoboda said the use has continued since 1986 and that there have not been any significant changes to the building since 1984. He explained that prior to 1982, the basement of the house and the outdoor boarding kennel were used for veterinary services. The first floor of the house was used for residential purposes when originally purchased by the Applicants. Dr. and Mrs. Svoboda moved out of the house in 1993. The expansion and extension are shown on Applicant's Exhibit Nos. 21-A and 21-B. Dr. Svoboda testified that the entire first floor of the building would be used for a veterinary clinic and that he does not believe the extension or expansion of the veterinary clinic would have any significant impact on the use of the property or surrounding neighbors. He said he has never received complaints about his veterinary practice or boarding kennels and that he does not intend to remove any trees from the property as a result of the proposed expansion.

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Dr. Svoboda testified that he would suffer practical difficulty if he is limited to an 1,800 square foot expansion since he would not be able to provide the space necessary for his practice. He said he believes that the area around his property has changed significantly since he first purchased the property in 1986 and that there has been a substantial increase in both residential and commercial development as well as the widening of MD Route 24.

Mr. Stephen Nolan testified as an expert civil engineer. Referring to Applicant's Exhibit No. 20., Mr. Nolan described the subject property, including the lot lines, existing vegetation, road access, topography, environmental features and surrounding uses. He noted that there had been an off conveyance of approximately 4 acres to the rear of the property which left 12.2 acres under the Applicants' ownership. He said 3,600 square feet of the building is currently used for the veterinary practice and boarding kennels. The proposed expansion of the veterinary clinic would include a 400 square foot addition to the building, which would result in a 2,800 square feet of additional veterinary clinic space and no additional kennel space. He said this would result in a 77% increase in the actual area used. He said the proposed use would require 12 parking spaces under the Harford County Code, and the site plans shows 20 parking spaces will be provided. Mr. Nolan testified that the site plan complied with all setback, coverage and height restrictions in the R2 District and that the proposed use would not adversely impact the Natural Resource District, stream or forested area to the rear of the property.

Mr. Denis Canavan appeared and was accepted as an expert in the field of planning, zoning and land use matters. Mr. Canavan said that prior to 1982, the property was zoned Agricultural and that a veterinary clinic was permitted in an Agricultural District at that time. Mr. Canavan said that the property was zoned R2 in the 1982 Comprehensive Rezoning. He said that a veterinary clinic is not a permitted use in the R2 zone and that even though the property owner did not request the R2 zoning, it appeared the property was zoned to R2 to make it consistent with surrounding property classifications. He said the subject property is shown as being medium intensity on the Harford County Master Plan and that the proposed expansion is consistent with the medium intensity designation.

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Mr. Canavan went on to testify that a veterinary and boarding kennel were established on the property prior to the effective date of the 1982 Zoning Code and that the existing clinic and kennel constitute a valid, non-conforming use. He said generally a non-conforming use is limited to an expansion of 50%. Mr. Canavan said the proposed enlargement does not change the use to a less restrictive or more intense use and the proposed expansion does not violate the height or coverage restrictions of the zoning district and would not adversely affect adjoining properties, traffic patterns or the surrounding neighborhood.

Mr. Canavan went on to testify that the subject property is unique because of its size, shape, natural features and use history. Of the 12 acres owned by the Applicants, only 2 acres are devoted to the veterinary clinic and boarding kennel. A veterinary clinic and kennel has been established on the property for almost 50 years. The property is located on a heavily traveled highway with a substantial amount of Natural Resource District, stream and mature trees which provide an excellent buffer to surrounding residential properties. He said the property slopes away from MD Route 24 and, due to the topography and buffer on the site, the veterinary clinic building is not highly visible from MD Route 24.

Mr. Canavan believed that literal enforcement of the 50% limitation on expansion of the non-conforming use would result in practical difficulty to the Applicant and that the proposed expansion is reasonable and provides a necessary service to the surrounding community. Unique characteristics of the property mitigate the effects of exceeding the 50% limit. Mr. Canavan considered the "Limitations, Guides and Standards" set forth in Section 267-9(l) of the Zoning Code and concluded that none of the "Limitations, Guides and Standards" indicate that the relief should be denied.

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No protestants appeared in opposition to the Applicants' request and the Staff Report recommends conditional approval and provides:

"The expansion of the use and the building are necessary to keep up with the growth of the surrounding community. The proposal will provide better service to the community for a use that has been serving the community for 45 years. Prior to 1982, the property was zoned AG Agricultural, and the use was a principal permitted use under the guidelines of the 1957 Zoning Ordinance. The use became non-conforming in 1982 when the County changed the zoning classification of the property to R2, Urban Residential, which did not permit the use. This change was not the result of the Applicants' actions.

### **CONCLUSION:**

The Applicant is requesting an extension or expansion of a non-conforming use pursuant to Section 267-21 of the Harford County Code, and a variance to Section 267-21(B) to allow the extension or expansion to exceed 50% of the gross square footage in use at the time of the creation of the non-conformity.

Section 267-21 provides:

"The Board may authorize the extension or enlargement of a nonconforming use, with or without conditions, provided that:

- A. The proposed extension or enlargement does not change to a less-restricted and more-intense use.
- B. The enlargement or extension does not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the nonconformity.
- C. The enlargement or extension does not violate the height or coverage regulations for the district.
- D. The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.
- E. The limitations, guides and standards set forth in § 267-9(l), Limitations, guides and standards, are considered by the Board."

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The Applicants, through the testimony of their witnesses, demonstrated that they have complied with subsections A, C, D and E of Section 267-21. The proposed use of the subject property is not changing, as it will remain a veterinary clinic and kennel as it was established almost 50 years ago. The testimony of the Applicants' witnesses was unanimous that the enlargement or extension of the veterinary clinic would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood. All the Applicants' witnesses, as well as the Staff Report of the Department of Planning and Zoning, confirmed that the veterinary clinic has co-existed harmoniously with surrounding uses for many years.

Denis Canavan testified that he had considered the "Limitations, Guides and Standards" set forth in Section 267-9(l) of the Zoning Code and none of the "Limitations, Guides and Standards" indicate that the proposed relief should be denied.

The only provision of Section 267-21 to which the Applicant cannot comply is subsection B, limiting the expansion or extension to 50% of the gross square footage in use at the time of the creation of the non-conforming. The Applicant has requested a variance from that requirement in order to allow an extension or expansion of 77%. The Harford County Code, pursuant to Section 267-11 authorizes the granting of variances, provided the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.

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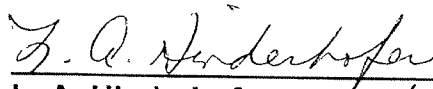
The concept of uniqueness in variance cases was discussed by the Court of Special Appeals in the case of North v. St. Mary's County, 99 Md. App. 502, wherein the Court said:

"In the zoning context, the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls."

An area variance may be granted when the Applicant demonstrates practical difficulty or unusual hardship or both. The present request is in the nature of an area variance. The testimony presented by the Applicants compel the conclusion that the property is unique and that denial of the variance would result in practical difficulty and unnecessary hardship to the owners. Further, the granting of the variance will not adversely affect the use and enjoyment of neighboring properties or the Natural Resource District.

Therefore, it is clear that the Applicants are entitled to the extension or expansion and a variance from the 50% limitation on the extension and expansion of the non-conforming veterinary clinic and kennel. The variance shall be subject to the condition that the Applicants obtain all necessary permits and inspections for the expansion and addition.

Date NOVEMBER 24, 1999

  
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L. A. Hinderhofer  
Zoning Hearing Examiner